

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

STAFF REPORT

Hearing Date/Agenda Number
P.C. 12-10-03 Item: 4.a.

File Number
TR03-091

Application Type
Tree Removal Permit

Council District
6

Planning Area
West Valley

Assessor's Parcel Number(s)
277-33-013

PROJECT DESCRIPTION

Completed by: Erin Morris

Location: west side of South Redwood Avenue approximately 490 feet south of Stevens Creek Boulevard (365 South Redwood Avenue)

Gross Acreage: 0.15

Net Acreage: 0.15

Net Density: n/a

Existing Zoning: CG Commercial
General

Existing Use: Medical office

Proposed Zoning: No change

Proposed Use: No change

GENERAL PLAN

Completed by: ELM

Land Use/Transportation Diagram Designation
GC General Commercial

Project Conformance:
☒ Yes ☐ No
☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: ELM

North: Commercial

CG - Commercial General

East: Commercial

CG - Commercial General

South: Commercial

CG - Commercial General

West: Mixed Use (Santana Row)

A(PD) Planned Development

ENVIRONMENTAL STATUS

Completed by: ELM

☐ Environmental Impact Report found complete
☐ Negative Declaration circulated on

☒ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: ELM

Annexation Title: Maypark No. 1

Date: 2/18/54

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☒ Approval
☐ Approval with Conditions
☐ Denial
☒ Uphold Director's Decision

Date: December 3, 2003

Approved by: _____
☒ Action
☐ Recommendation

APPLICANT/OWNER/DEVELOPER

Cecilia and Adrian Ma
365 South Redwood Avenue
San Jose, CA 95128

PUBLIC AGENCY COMMENTS RECEIVED**Completed by: ELM**

Department of Public Works

None received

Other Departments and Agencies

None received.

GENERAL CORRESPONDENCE

See attached Notice of Permit Appeal filed by Richard Cuevas on October 27, 2003.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

This is an appeal of the Planning Director's decision to approve a Tree Removal Permit (File No. TR03-091) to allow removal of one Elm tree (68 inches in circumference) and for removal of one Elm tree (65 inches in circumference) that was removed without the benefit of a permit. The Tree Removal Permit was heard at the October 15, 2003, Director's Hearing and approved by the Planning Director on October 17, 2003.

The site and surrounding properties are zoned CG Commercial General. An existing building on the site was originally constructed as a single-family residence and subsequently converted to commercial use (File No. SP02-040). Existing uses surrounding the site include commercial uses to the north and south, commercial and single-family uses to the east, and the Santana Row mixed-use development to the west.

On October 27, 2003, Richard Cuevas, who owns property within 1000 feet of the project site, filed an appeal of the Director's decision to approve the subject Tree Removal Permit (see attached letter). A response to Mr. Cuevas' appeal is provided in the Analysis section below.

ENVIRONMENTAL REVIEW

This project has been determined to be exempt from environmental review under Section 15304. The exemption applies to this project because it involves a minor alteration of vegetation.

GENERAL PLAN CONFORMANCE

The project site has a designation of *General Commercial* on the San Jose 2020 General Plan Land Use/Transportation Diagram. The existing single-family residential structure, which has been converted to commercial use, is consistent with this designation.

COMMUNITY OUTREACH

Public hearing notices for the proposed Tree Removal Permit and the subsequent appeal were mailed to all property owners and tenants within 300 feet of the subject site. The subject Tree Removal Permit was considered at a public Director's Hearing conducted on October 15, 2003. Staff has been available to discuss the project with interested members of the public.

ANALYSIS

Tree Removal Controls

In order to grant a Tree Removal Permit, the Director (or the Commission on appeal) must make one or more of the following findings:

1. That the tree affected is of a size, type and condition, and is in such a location in such surroundings, that its removal would not significantly frustrate the purposes of this chapter as set forth in Section 13.32.010; or
2. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question; or
3. That the condition of the tree with respect to disease, danger of falling, proximity to an existing or proposed structure, and/or interference with utility services, is such that preservation of the public health or safety requires its removal.

Analysis of Required Findings for Tree Removal

There was no evaluation of the 65-inch Elm tree removed without the benefit of permits by an arborist because the tree was removed before an evaluation could be performed. The removal of the tree was brought to the City's attention when a complaint was made to the Code Enforcement Division. The applicant has paid a fine to the City for this unpermitted removal of the tree. Staff is recommending a four-to-one replacement ratio for the subject tree.

In support of the tree removal application for the 68-inch Elm tree, the applicant provided a report (see attached) from certified arborist Michael Young of Urban Tree Management. The report states, "The existing Chinese Elm tree... has such a poor structure that the likelihood of failure is very high. There is no chance this tree will ever recover and it should be removed and replaced as soon as possible." Further, the report states that the tree is a hazard because of its unstable structure. Based on the arborist's report, staff concludes that the condition of the tree with respect to danger of falling is such that preservation of public health and safety requires its removal. Based on the small size of the site and the lack of a park strip in the area in which to install new street trees, staff is recommending that one replacement tree be provided for this tree removal. There are three existing trees on the site. Staff believes that the site can accommodate up to five new trees and is recommending that three new trees be planted to the rear of the building and two new trees be planted in the front yard in conformance with the attached site plan.

Appeal

The issues raised in the letter of Appeal are presented below followed by a staff response.

Comment: *The neighborhood has few mature trees. The existing tree is not dead and should be respected.*

Staff Response: Staff concurs with the appellant's statement regarding the quantity of mature trees in the area and with the statement that the existing tree is not dead. As indicated above, the arborist report indicates that the tree is in danger of failure and should be removed as soon as possible. Based on this analysis, staff was able to make the finding that the condition of the tree was such that preservation of public health and safety requires its removal.

Comment: *Was an arborist consulted before the tree was removed?*

Staff Response: An arborist was consulted (see attached arborist report).

Comment: *Were the trees being removed to accommodate business signs?*

Staff Response: Accommodation of business signs was not identified by the applicant as a reason for tree removal.

Comment: *Were Santana Row residents notified of the proposed removal?*

Staff Response: Public hearing notices for the proposed Tree Removal Permit and the subsequent appeal were mailed to all property owners and tenants within 300 feet of the site. There are no Santana Row residents within 300 feet of the site.

Comment: *Could the existing tree be saved with cabling or trimming?*

Staff Response: The arborist report indicated that trimming the tree to remove sufficient end weight to keep it from falling apart would completely disfigure the tree. Staff did not request an analysis of cabling the tree because the structure of the tree appeared to be so poor that there were no suitable limbs to which weak limbs could be cabled.

Comment: *The City Arborist should be consulted in the matter of mature trees.*

Staff Response: The City Arborist is responsible for processing tree removal requests for street trees but does not routinely review removal requests for trees located on private property. The City Arborist is occasionally consulted where staff identifies the need for a second opinion to corroborate the analysis of the project arborist. In this case, staff did not believe a second opinion was necessary.

RECOMMENDATION

Planning staff recommends that the Planning Commission uphold the Director's decision to approve the proposed Tree Removal Permit and include the following facts and findings in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding the proposed project.

1. This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site and surrounding properties are in the CG Commercial General Zoning District.

3. The project is exempt from environmental review under Section 15301.
4. An existing building on the site was originally constructed as a single-family residence and subsequently converted to commercial use (File No. SP02-040).
5. Existing uses surrounding the site include commercial uses to the north and south, commercial and single-family uses to the east, and the Santana Row mixed-use development to the west.
6. The project site has a designation of *General Commercial* on the San Jose 2020 General Plan Land Use/Transportation Diagram. The existing single-family residential structure, which has been converted to commercial use, is consistent with this designation.
7. The permit will allow removal one Elm tree (68 inches in circumference) and removal of one Elm tree (65 inches in circumference) that was removed without the benefit of a permit.
8. The Tree Removal Permit was heard at the October 15, 2003 Director's Hearing and approved by the Planning Director on October 17, 2003.
9. On October 27, 2003, Richard Cuevas, who owns property within 1000 feet of the project site, filed an appeal of the Director's decision to approve the subject Tree Removal Permit.
10. A report from a certified arborist stated, "The existing Chinese Elm tree... has such a poor structure that the likelihood of failure is very high. There is no chance this tree will ever recover and it should be removed and replaced as soon as possible."

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The affected tree(s) is/are of a size, type and condition, and in such a location and in such surroundings that removal would not significantly frustrate the purposes of the Chapter as set forth in Section 13.32.010 of the San Jose Municipal Code in that the Elm tree/68 inches in circumference is in danger of falling and the preservation of public health and safety requires its removal.

CONDITIONS PRECEDENT

1. **Permit Expiration.** This Tree Removal Permit shall automatically expire two years from and after the date of issuance hereof by said Director if within such two-year period removal of said tree(s) has not commenced, pursuant to and in accordance with the provisions of this Tree Removal Permit. The date of issuance is the date this Permit is approved by the Director of Planning.
2. **Replacement Trees.** Within 90 days of the day following permit approval, the applicant shall provide 5 replacement trees of at least 15 gallons in size to the satisfaction of the Director of Planning. A minimum of two shade trees shall be planted in the front yard of the property.
3. **Permit Adjustment.** Within 90 days following permit approval, the applicant shall submit a permit adjustment application with the revised landscape plan showing replacement trees to the Planning Division.

Attachments:

Location map

Notice of Appeal

Letter from Cecilia Ma

Arborist Report & Curriculum Vitae of Michael Young, Certified Arborist

Photograph of Existing Tree

Existing & Proposed Site Plan

c: Richard Cuevas, 382 S. Redwood Avenue, San Jose, CA 95128

207-13/11